

RENE L. VALLADARES
Federal Public Defender
Nevada State Bar No. 11479
BRIAN PUGH
Assistant Federal Public Defender
411 E. Bonneville, Ste. 250
Las Vegas, Nevada 89101
(702) 388-6577/Phone
(702) 388-6261/Fax
Brian_Pugh@fd.org

Attorney for Wayne Harper

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

V.

WAYNE HARPER,

Defendant.

Case No. 2:16-cr-211-GMN-NJK

DEFENDANT'S UNOPPOSED
MOTION TO CORRECT
TECHNICAL ERROR IN
JUDGMENT PURSUANT TO FED.
R. CRIM. P. 35
(Expedited treatment requested)

Certification: This motion is timely filed.

The defendant, WAYNE HARPER, by and through his attorney of record, Brian Pugh, Assistant Federal Public Defender, submits this unopposed motion to correct a technical error in the judgment for consideration by the Court.

DATED this 24th day of April 2019.

RENE L. VALLADARES
Federal Public Defender

By: /s/ Brian Pugh

BRIAN PUGH
Assistant Federal Public Defender

MOTION TO CORRECT TECHNICAL ERROR IN JUDGMENT

On April 11, 2019, Mr. Harper appeared before this Court for sentencing. ECF No. 72. This Court sentenced Mr. Harper to five years of probation. ECF No. 73. At the time of sentencing, Probation and the Government recommended that one of Mr. Harper's conditions of probation be drug testing. However, based upon the three decades that have passed since Mr. Harper's last arrest for a drug related offense and the twelve years since he last used, this Court did not impose a drug testing condition.

The judgment in this case does not include a drug-testing special condition of probation. See ECF No. 73 at 4. However, Mandatory Condition 3 states the following:

You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as determined by the court, not to exceed 104 tests annually.

- The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (*check if applicable*)

ECF No. 73 at 2. On Mr. Harper's judgment, the box suspending the drug testing condition is not checked. *Id.* Mr. Harper now requests that this Court amend the judgment by checking the box that would suspend the drug testing condition.

Rule 35 authorizes the Court to correct a sentence within 14 days after sentencing to correct an error that resulted from an “arithmetic, technical, or other clear error.” Fed. R. Crim. P. 35(a). On the date of sentencing, it was this Court’s intent that Mr. Harper not be subject to drug testing. Mr. Harper requests that this Court amend the judgment to reflect this Court’s intention.

The undersigned has consulted with the assigned AUSA on this case and he stated that the government does not object to Mr. Harper's proposed correction to the judgment.

Mr. Harper requests expedited treatment of this motion because 12 days have passed since his sentencing.

CONCLUSION

Mr. Harper respectfully requests that this Court correct the judgment by checking the box under mandatory condition 3 thereby suspending the drug testing condition of probation.

Dated this 24th day of April 2019.

Respectfully submitted,

RENE L. VALLADARES
Federal Public Defender

By: /s/ Brian Pugh

BRIAN PUGH
Assistant Federal Public Defender

ORDER

IT IS HEREBY ORDERED that the above Unopposed Motion to Correct Technical Error in Judgment Pursuant to Federal Rule of Criminal Procedure 35, (ECF No. 75), filed by Defendant Harper is **GRANTED**. The judgment shall be corrected accordingly.

DATED this 25 day of April, 2019.

Gloria M. Navarro, Chief Judge
UNITED STATES DISTRICT COURT

1 **CERTIFICATE OF ELECTRONIC SERVICE**

2 The undersigned hereby certifies that she is an employee of the Federal Public Defender
3 for the District of Nevada and is a person of such age and discretion as to be competent to
4 serve papers.

5 That on April 24, 2019, she served an electronic copy of the above and foregoing
6 **DEFENDANT'S UNOPPOSED MOTION TO CORRECT TECHNICAL ERROR IN**
7 **JUDGMENT PURSUANT TO FED. R. CRIM. P. 35 (Expedited Treatment Requested)**
8 by electronic service (ECF) to the person named below:

9
10 NICHOLAS A. TRUTANICH
11 United States Attorney
12 JARED L. GRIMMER
13 Assistant United States Attorney
14 501 Las Vegas Blvd., South
15 Suite 1100
16 Las Vegas, NV 89101

17
18 _____
19 */s/ Stephanie Young*
20 Employee of the Federal Public Defender
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